

Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 120.2105. (This is a GIL.)

June 20, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 22, 2011, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I'm trying to find out the correct application of the Telecom Excise Tax and the Simplified Municipal Telecom Excise Tax on the following charges (identified below) provided by telecom service providers that are provided to their subscribers via a wireless/cell phone or an additional fee.

The charges are:

1. Ring Tones [sic]: A charge for downloading a ringtone.
2. Downloaded Media: a charge for downloading sports scores, newspapers, articles, restaurant menus, etc.
3. Downloaded Music/Videos: a charge for downloading music/videos.
4. Downloaded Software: a charge for downloading software.

According to 86 Ill. Adm. Code 130.2105(a)(3) information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, do not constitute the transfer of tangible personal property. These types of transactions are considered to be 'intangible' and are thus not subject to ROT. However, software is considered to be taxable tangible personal property regardless of the form in which it is transferred or transmitted.

My question today pertains more to the Excise Taxes levied under 35 ILCS 630/1 et. seq. and 35 ILCS 363/5-1 et seq. rather than the ROT. Should items #1-3 not be subject to any tax in the state as they are considered to be a transfer of an 'intangible?' Similarly, item #4 would be subject to ROT but not the Excise Tax. Nowhere in the Telecommunications Excise Tax statutes or regulations do they impose a tax on the transfer of an intangible'.

I logged a request through the IDOR Support website and INDIVIDUAL responded that he had searched through the GIL's and PLR's issued by the DOR's Legal Division and couldn't find anything that specifically addressed my inquiry. However, he also felt that these items did not fall within the definition of 'telecommunications' as defined in the Telecommunications Excise Tax Act. He suggested that I contact the Legal Division for a more definitive response. Hence, the reason for my letter.

Any help you could provide would be greatly appreciated. My contact information is provided below.

#### **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105(a)(3). However, canned computer software is considered taxable tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935. If the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c). Custom computer programs or software must be prepared to the special order of the customer. Charges for updates of canned software are fully taxable pursuant to Section 130.1935. If the updates qualify as custom software under Section 130.1935(c), they may not be taxable.

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

“Telecommunications,” in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. “Telecommunications” do not include “value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.” See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide these services, the charges for each service must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

“Gross charges” means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. “Gross charges” do not include “charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content.” See 86 Ill. Adm. Code 495.100(c).

Section 495.100(i) states that, “[g]ross charges shall include the transmission charges for premium services. Time/weather, gab line/party line and other public announcement services of information and entertainment, and charges for the message content or information of such services, are not included in gross charges.” Please note that charges for such services are not subject to Telecommunications Excise Tax provided that the charges for such services are disaggregated and separately identified from other charges in the books and records of the telecommunications retailer. See 86 Ill. Adm. Code 495.100.

Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130. 2105(a)(3). Please note that canned computer software is considered tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media and subject to Retailers’ Occupation Tax. See 86 Ill. Adm. Code 130. 1935.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:mzk